
IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

DALE K. BARKER CO., PC,

Plaintiff,

v.

LARRY J. SUMRALL, et al.,

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:03-cv-00903 CW

Judge Clark Waddoups

Final judgment was entered in this case on June 14, 2012 against Dale K. Barker Co. (“Barker Co.”), which among other things, awarded attorney fees and costs in favor of the defendants and cross claimants Larry J. Sumrall and Patricia A. Sumrall (collectively the “Sumralls”).¹ Barker Co. then filed an appeal, which challenged “virtually every aspect of that judgment.” *See Dale K. Barker Co., P.C. v. Valley Plaza*, No. 12-4147, 2013 U.S. App. LEXIS 19175, at *2 (10th Cir. Sept. 17, 2013). Barker Co. lost the appeal. The Sumralls then sought an additional award of attorney fees and costs pursuant to the terms of the contracts at issue in this case. Due to the contract language, the Tenth Circuit affirmed the Sumralls are entitled to an additional award and remanded the case to this court for a determination of those expenses. *See Supplement to Mandate*, at 3 (Dkt. No. 358).

This court ordered the parties to submit briefing on the issue no later than November 12,

¹ Final judgment also was entered against Dale K. Barker Jr. (“Barker Jr.”). He was not a party to the contracts at issue in this case, however, which contracts provide for attorney fees and costs only against Barker Co. Because those expenses are only applicable to Barker Co., the court does not include Barker Jr. in this order.

2013. The Sumralls filed their Motion for Supplemental Award of Attorney's Fees and Costs on November 5, 2013, and requested the following supplemental award:

Attorney Fees	\$ 32,714.89
Costs	
Paralegal	\$ 3,430.00
Legal Assistant	\$ 20.00
Other Costs	\$ 1,343.07

As of this date, Barker Co. has not opposed the motion nor filed any other briefing on the matter.

The contracts at issue in this case contain the following provision: "In the event of a breach of this Agreement, the non-defaulting party shall be entitled to *all* costs and attorneys' fees incurred in enforcing this Agreement or in seeking any other remedy." Amended Conclusions of Law, ¶ 19 (Dkt. No. 319) (emphasis added). The contract language regarding costs is more expansive than what would otherwise be available under the applicable rules of procedure. Moreover, the court previously concluded that the contract claims are so intertwined with the non-contract claims that "it would not be feasible to allocate attorney fees among them." *Dale K. Barker Co., PC v. Sumrall*, No. 2:03-cv-903, 2012 U.S. Dist. LEXIS 118622, at *8 (D. Utah Aug. 21, 2012). That same reasoning applies to fees and costs incurred by the Sumralls to defend the appeal in this matter.

The court has reviewed the amounts requested by the Sumralls and finds them to be reasonable, but subject to two modifications. As stated in the court's prior ruling, the Utah Supreme Court has recognized that paralegal and legal assistant fees may be "recoverable as part of an award of attorney fees" because they "promote[] lawyer efficiency and decrease[] client litigation costs." *Id.* at *15 (quoting *Baldwin v. Burton*, 850 P.2d 1188, 1200 01 & n.61 (Utah 1993)). Accordingly,

those expenses are more properly categorized under attorney fees rather than costs.

Additionally, pursuant to Rule 39(a)(2) of the Federal Rules of Appellate Procedure, the Tenth Circuit awarded \$190.00 in costs to the Sumralls. The Sumralls included those costs in the figure above. Those costs, however, were taxed against both appellants based on appellate procedure and not pursuant to contractual terms. Because the Tenth Circuit has already taxed those costs, the court does not include them in this award.


With those two modifications, the court awards the following supplemental attorney fees and costs against Barker Co.:

Attorney Fees	\$ 36,164.89 (which includes paralegal and legal assistant fees)
Costs	<u>\$ 1,153.07</u>
Total	\$37,317.96

The court directs that judgment be entered against Barker Co. for these amounts.

SO ORDERED this 15th day of November, 2013.

BY THE COURT:


Clark Waddoups
United States District Judge